

RESOLUTION GRANTING FINAL THIRD ROUND SUBSTANTIVE CERTIFICATION

#3-09(a)

Flemington Borough, Hunterdon County

WHEREAS, Flemington Borough, Hunterdon County, petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation on December 30, 2008; and

WHEREAS, Flemington Borough's fair share plan addresses its rehabilitation obligation of 17 units, a four-unit prior round realistic development potential (RDP), 34-unit prior round unmet need, and a 21-unit projected growth share obligation pursuant to Appendix F of N.J.A.C. 5:97; and

WHEREAS, Flemington Borough's plan proposes to address its 17-unit rehabilitation obligation with a 17-unit rehabilitation program; and

WHEREAS, on April 8, 2009, COAH granted Flemington Borough conditional substantive certification with two conditions to be met within 60 days, or no later than June 7, 2009 (see COAH Conditional Compliance Report and resolution granting conditional third round substantive certification, attached as Exhibit B and incorporated by reference herein); and

WHEREAS, the two conditions were:

1. The Borough shall designate an experienced administrative entity for its rehabilitation program in accordance with N.J.A.C. 5:96-18; and
2. The Borough shall submit an operating manual for its rehabilitation program.

WHEREAS, on June 4, 2009, Flemington Borough submitted a resolution authorizing NORWESCAP to operate the Borough's rehabilitation program and an operating manual for its rehabilitation program; and

WHEREAS, Flemington Borough adopted its affordable housing ordinance on May 11, 2009, and its affirmative marketing plan on May 27, 2009; and

NOW THEREFORE BE IT RESOLVED that COAH has reviewed Flemington Borough's petition for substantive certification of its third round Housing Element and Fair Share Plan and the additional documentation submitted by Flemington and has determined that Flemington has satisfied the outstanding conditions, as noted in the Final Compliance Report dated June 5, 2009 (attached as Exhibit A and incorporated by reference herein); and

BE IT FURTHER RESOLVED that the Housing Element and Fair Share Plan submitted by Flemington Borough comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(a) and after having reviewed and considered all of the above, COAH hereby grants final third round substantive certification to Flemington Borough; and

BE IT FURTHER RESOLVED that Flemington Borough shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting Flemington's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of Flemington's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in Flemington and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Borough is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, COAH may direct Flemington Borough to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, Flemington shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), Flemington's substantive certification shall remain in effect until December 30, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of Flemington Borough to provide for the realistic opportunity of its fair share of low and moderate income housing and which the Borough fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on July 8, 2009

A handwritten signature in black ink, reading "René Reiss". The signature is written in a cursive, flowing style with a large initial "R".

René Reiss, Secretary
Council on Affordable Housing



***Council on Affordable Housing
Final Compliance Report
June 5, 2009***



Municipality: Flemington Borough
County: Hunterdon County

COAH Region: 3
Planning Area: 3
Special Resource Area: None

Housing Element and Fair Share Plan Adopted: 12/17/2008
Petition for 3rd Round Substantive Certification: 12/30/2008
Completeness Determination: 1/9/2009
Date of Publication: 1/28/2009

Objections Received: No

Petition Includes:

VLA: No

GPA: No

Waiver: Yes **Section:** N.J.A.C. 5:80-26.3(a) & (b)

Date of Site Visit: March 12, 2009

History of Approvals:

	COAH	JOC	N/A
First Round:			X
Second Round:	8/6/2003		
Extended Certification:			X

Plan Preparer: Elizabeth McManus, P.P., AICP – Clarke Caton Hintz

Municipal Housing Liaison: Dianne Schottman, Borough Clerk

Recommendation: Grant Final Substantive Certification

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	17
Prior Round Realistic Development Potential (RDP) (Unmet Need of 34)	4
Projected Growth Share Obligation (Net)	21

ACTUAL GROWTH and GROWTH SHARE through September 2008¹

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
22	4.4	46	2.9	7

COMPLIANCE PLAN SUMMARY

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
Rehabilitation: 17 units				
Program(s)	Rehabilitation		17	17
Rehabilitation Subtotal				17
NEW CONSTRUCTION:				
Prior Round: 4 units (RDP)				
Credits	Post-1986	4		4
Prior Round Subtotal				4
Growth Share: 21 units				
Credits	Post-1986	11		11
Proposed Mechanism(s)	Market To Affordable Program	-	7	7
Growth Share	Compliance	2	-	2
Bonus(es)	Rental	-	3	3
Growth Share Subtotal				23
Surplus				+2

¹ Does not include exclusions permitted under N.J.A.C. 5:97-2.4, which may lower actual growth share.

I. PROPOSED REHABILITATION PROGRAM

Flemington Borough has a rehabilitation share of 17 units. Flemington's Housing Element and Fair Share Plan indicated that it would utilize Hunterdon County's housing rehabilitation program to address its rehabilitation obligation. However, the Borough was unable to reach an agreement with the County. Therefore, Flemington Borough received conditional substantive certification from COAH for its third round Housing Element and Fair Share Plan on April 8, 2009. Two conditions were noted in the COAH resolution that were to be addressed within 60 days, or no later than June 7, 2009:

1. The Borough shall designate an experienced administrative entity for its rehabilitation program in accordance with N.J.A.C. 5:96-18; and
2. The Borough shall submit an operating manual for its rehabilitation program.

Flemington submitted documentation on June 4, 2009, satisfying each of the conditions:

1. The Borough submitted a resolution authorizing NORWESCAP to operate the Borough's rehabilitation program. The Borough has an existing contract with NORWESCAP for the administration of the Borough's other affordable housing programs and units; and
2. The Borough submitted an operating manual for its rehabilitation program.

Flemington adopted its affordable housing ordinance on May 11, 2009, and its affirmative marketing plan on May 27, 2009.

II. RECOMMENDATION

Based on this review, Flemington Borough has addressed the conditions placed on the conditional substantive certification granted by COAH on April 8, 2009. COAH staff recommends that COAH grant Flemington Borough final substantive certification.

**RESOLUTION GRANTING CONDITIONAL THIRD ROUND SUBSTANTIVE
CERTIFICATION # 3-09**

Flemington Borough, Hunterdon County

WHEREAS, Flemington Borough, Hunterdon County, petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation on December 30, 2008; and

WHEREAS, Flemington's petition was deemed complete on January 9, 2009; and

WHEREAS, Flemington Borough published notice of its petition in the *Courier News* on January 28, 2009, which is a newspaper of general circulation within the county, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5; and

WHEREAS, no objections to the plan were received by COAH during the 45-day objection period, which ended March 18, 2009; and

WHEREAS, Flemington Borough's fair share plan addresses its rehabilitation obligation of 17 units, a four-unit prior round realistic development potential (RDP), 34-unit prior round unmet need, and a 21-unit projected growth share obligation pursuant to Appendix F of N.J.A.C. 5:97; and

WHEREAS, Flemington Borough's plan proposes to address its 17-unit rehabilitation obligation with a 17-unit rehabilitation program; and

WHEREAS, Flemington Borough's plan proposes to address its prior round RDP obligation with three post-1986 family for-sale credits from the Martin Village inclusionary development, one post-1986 age-restricted rental credit from the Herman E Kapp Apartments, and its prior round unmet need with 34 post-1986 age-restricted rental credits from the Herman E Kapp Apartments, for a total of 38 credits; and

WHEREAS, Flemington Borough's plan proposes to address its projected growth share obligation with one post-1986 family for-sale credit from the Martin Village inclusionary development, two post-1986 age-restricted rental credits from the Herman E Kapp Apartments, six post-1986 supportive/special needs credits from the Anderson House, one post-1986 family rental credit and compliance bonus in the Flemington Electric inclusionary development and one post-1986 family rental credit and compliance bonus in the Luster/Dodger Blues inclusionary development, for a total of 13 credits; and

WHEREAS, Flemington Borough's plan proposes to address its remaining eight-unit projected growth share obligation with a seven-unit Market to Affordable Rental Program and three rental bonuses for the program; and

WHEREAS, Flemington Borough's plan results in a two-unit surplus from its Market to Affordable Program; and

WHEREAS, Flemington Borough's plan requests a waiver from the low/mod split [N.J.A.C. 5:80-26.3(a)] and bedroom distribution requirements [N.J.A.C. 5:80-26.3(b)] for the Flemington Electric development; and

WHEREAS, the waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary financial hardship in that the one-bedroom moderate-income unit was necessary in order to support the financial feasibility of the project; and

WHEREAS, the waiver fosters the production of affordable housing by providing a unit in the downtown area in walking distance to shops, service and employment; and

WHEREAS, the waiver fosters the intent, if not the letter of the rules, in that the Borough will make up a low-income two-bedroom unit in its Market to Affordable Rental Program, and the Borough's Fair Share Plan provides a mix of housing options; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a), on March 19, 2009, COAH issued a Conditional Compliance Report (attached as Exhibit A and incorporated by reference herein) on Flemington Borough's petition for third round substantive certification recommending conditional approval; and

WHEREAS, there was a 14-day period to submit comments to the COAH Conditional Compliance Report pursuant to N.J.A.C. 5:96-6.2(d) and COAH received no comments.

NOW THEREFORE BE IT RESOLVED that with the conditions noted below, the Housing Element and Fair Share Plan submitted by Flemington Borough comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(d) and after having reviewed and considered all of the above, COAH hereby grants third round conditional substantive certification to Flemington Borough with the following conditions to be met within 60 days from the date of this resolution:

1. The Borough shall designate an experienced administrative entity for its rehabilitation program in accordance with N.J.A.C. 5:96-18; and
2. The Borough shall submit an operating manual for its rehabilitation program; and

BE IT FURTHER RESOLVED that Flemington Borough's waiver request from N.J.A.C. 5:80-26.3(a) and (b) for the affordable unit in the Flemington Electric development is approved; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(e), Flemington Borough shall adopt all implementing Fair Share Ordinances within 45 days of the grant of final substantive certification; and

BE IT FURTHER RESOLVED that if Flemington Borough fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that Flemington shall submit all Fair Share Ordinances to COAH upon adoption; and

BE IT FURTHER RESOLVED that Flemington shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting Flemington's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of Flemington's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in Flemington and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Borough is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, COAH may direct Flemington Borough to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, Flemington shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), Flemington's substantive certification shall remain in effect until December 30, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of Flemington Borough to provide for the realistic opportunity of its fair share of low and moderate income housing and which the Borough fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on April 8, 2009

A handwritten signature in black ink, reading "Reneé Reiss". The signature is written in a cursive, flowing style with a large initial "R".

Reneé Reiss, Secretary
Council on Affordable Housing



***Council on Affordable Housing
Conditional Compliance Report
March 19, 2009***



Municipality: Flemington Borough
County: Hunterdon County

COAH Region: 3
Planning Area: 3
Special Resource Area: None

Housing Element and Fair Share Plan Adopted: 12/17/2008
Petition for 3rd Round Substantive Certification: 12/30/2008
Completeness Determination: 1/9/2009
Date of Publication: 1/28/2009

Objections Received: No

Petition Includes:

VLA: No

GPA: No

Waiver: Yes **Section:** N.J.A.C. 5:80-26.3(a) & (b)

Date of Site Visit: March 12, 2009

History of Approvals:

	COAH	JOC	N/A
First Round:			X
Second Round:	8/6/2003		
Extended Certification:			X

Plan Preparer: Elizabeth McManus, P.P., AICP – Clarke Caton Hintz

Municipal Housing Liaison: Dianne Schottman, Borough Clerk

Recommendation: Grant Conditional Substantive Certification

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	17
Prior Round Realistic Development Potential (RDP) (Unmet Need of 34)	4
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COMPLIANCE PLAN SUMMARY

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Growth Share	Compliance	2	-	2
Bonus(es)	Rental	-	3	3
Growth Share Subtotal				23
Surplus				+2

¹ Does not include exclusions permitted under N.J.A.C. 5:97-2.4, which may lower actual growth share.

I. HOUSING ELEMENT

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. Flemington's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

A. Rehabilitation Share

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, Flemington Borough has a rehabilitation share of 17 units.

B. Prior Round Obligation

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. The Borough has a new construction obligation of 38 units. However, as part of the second round substantive certification, the Borough received a vacant land adjustment of 34 units that resulted in a reduced new construction obligation or realistic development potential (RDP) of four and an unmet need of 34.

C. Projected Growth Share

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97,

Flemington has a residential projection of 93 units and a non-residential projection of 220 jobs, which results in an initial projected growth share obligation of 39 affordable units. However, after subtracting the allowable exclusions itemized in Worksheet A (Attachment 1), the Borough's residential projection is reduced to 38. Therefore, the Borough's total projected growth share for the period 1999-2018 is 21 affordable units consisting of a 7.6-unit projected residential growth share and a projected non-residential growth share of 13.75.²

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	17
Prior Round RDP (Unmet Need of 34)	4
Projected Growth Share Obligation (Net)	21

II. FAIR SHARE PLAN

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

Flemington Borough's Fair Share Plan, and the supporting documentation incorporated by reference therein, address the requirements of N.J.A.C. 5:97-3.1 as follows:

² The Borough's residential projection of 38 is divided by 5 to yield 7.6 units and the nonresidential projection of 220 jobs is divided by 16 to yield 13.75 units. The Borough's total projected growth share is therefore 21 units (7.6 + 13.75).

A. Plan to Address Rehabilitation Share

Rehabilitation Share Credits

Flemington Borough's Housing Element and Fair Share Plan does not include a request for rehabilitation credits.

Proposed Rehabilitation Program(s)

Rehabilitation Program

Flemington's Housing Element and Fair Share Plan indicates that it will utilize Hunterdon County's housing rehabilitation program to address its rehabilitation obligation. However, the Borough was unable to reach an agreement with the County. Therefore, pursuant to N.J.A.C. 5:96-6.3(d), Flemington has 60 days to designate an experienced administrative entity in accordance with N.J.A.C. 5:96-18 and submit an operating manual for its rehabilitation program. Flemington's rehabilitation program must adhere to N.J.A.C. 5:97-6.2, including having the program available to both owner-occupied and renter-occupied units. Flemington has committed to provide funding from its affordable housing trust fund to pay for the program or supplement the cost of the program. The Borough has provided an implementation schedule for the rehabilitation program in its spending plan and has submitted a resolution of intent to bond in the event of a shortfall in funding that was adopted on December 22, 2008. **[17-unit rehabilitation program- pending receipt of additional information]**

Proposed Rehabilitation Program(s)

Rehabilitation Program	# Units
Flemington Rehab Program	17
TOTAL	17

B. Plan to Address Prior Round Obligation

Prior Round Obligation Credits

Realistic Development Potential (RDP)

Flemington is addressing the Prior Round RDP obligation with four post-1986 credits. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

**Post-1986 Credits
(toward RDP of 4)**

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Martin Village inclusionary development ³	2008	Family For-Sale ⁴	3	-	-	3
Herman E. Kapp Apartments ⁵	2006	Age-restricted Rental	1	-	-	1
TOTALS			4			4

Unmet Need

Flemington is addressing the Prior Round Unmet Need with 34 post-1986 credits from the Herman E Kapp Apartments. The Borough is proposing to eliminate the use of the development fee ordinance and the accessory apartment program to address unmet need because they are no longer needed. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

³ The project contains four affordable units. Flemington is requesting that three of the units be used to address the Borough's RDP and one unit be carried over to the growth share obligation.

⁴ Because the project was originally created to be age-restricted units, the units do not have the proper bedroom distribution. On November 1, 2007, COAH granted the Borough a bedroom distribution waiver for this project.

⁵ The project is a 60-unit age-restricted 100 percent affordable rental complex. Flemington is requesting that one of the units be used to address the Borough's RDP, 34 units toward unmet need and two toward the growth share obligation.

**Post-1986 Credits
(toward Unmet Need of 34)**

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Herman E. Kapp Apartments	2006	Age-restricted Rental	34	-	-	34
TOTALS			34		-	34

Proposed Affordable Housing Mechanisms

Flemington Borough is relying on credits and therefore is not proposing any additional affordable housing mechanisms to address its Prior Round Obligation.

Prior Round Obligation Parameters

Flemington Borough has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:⁶ 1 Unit

Development/Project Name	Type of Affordable Unit	# Units
Herman E. Kapp Apartments	Age-restricted Rental	1
TOTAL		1

Prior Round Age-Restricted Maximum⁷ : 5 Units

Development/Project Name	Type of Affordable Unit	# Units
Herman E. Kapp Apartments	Age-restricted Rental	1
TOTAL		1

⁶ Rental Obligation = .25 (RDP) or .25 (4) = 1 unit N.J.A.C. 5:97-3.11(b)1

⁷ Age-Restricted Maximum= .25 (RDP + Rehabilitation Share-Rehabilitation Credits) or .25(4+17) = 5 units N.J.A.C. 5:97-3.11(c)

C. Plan to Address Projected Growth Share

Growth Share Credits

Flemington is addressing a portion of the projected growth share obligation with 11 units of credit and two compliance bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Martin Village	2008	Family For-Sale	1	-	-	1
Herman E. Kapp Apartments	2006	Age-restricted Rental	2	-	-	2
Anderson House	2004	Supportive/Special Needs Housing	6	-	-	6
Flemington Electric inclusionary	2006	Family Rental	1	Compliance	1	2
Luster/Dodger Blues inclusionary ⁸	2007	Family Rental	1	Compliance	1	2
TOTALS			11		2	13

Flemington Electric Waiver

Flemington Electric is located at 130 Main Street in the Downtown Business District (Block 29, Lot 6) and is .34 acres. The site was granted preliminary site plan approval on January 24, 2006, final approval on March 28, 2006, and is currently built and occupied. The development involved improvement of an existing developed lot. The developer retained five existing apartments and constructed six additional apartments, of which one unit is affordable. The certificate of occupancy for the new building was issued on June 21, 2007. The affordable unit was created as a result of the Borough's then adopted growth share ordinance adopted on September 26, 2005, which required an 11.1 percent set-aside.

⁸ Luster/Dodger Blues is approved but not yet constructed.

Instead of providing a two-bedroom low-income unit, the affordable unit is a one-bedroom moderate-income unit. Pursuant to N.J.A.C. 5:96-15, the Borough is requesting a waiver from the low/mod split [N.J.A.C. 5:80-26.3(a)] and bedroom distribution requirements [N.J.A.C. 5:80-26.3(b)]. The Borough proposed to mitigate the loss of a two-bedroom low-income unit by making up the unit in the proposed market to affordable program. The waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary financial hardship. The Borough states that the one-bedroom moderate-income unit was necessary in order to support the financial feasibility of the project because rehabilitation in older historic downtowns can be costly due to the structural and cosmetic impact of the age of the building and the detailed architecture necessary to be compatible with the historic downtown. In addition, the Borough has satisfied the other waiver criteria in that the waiver fosters the production of affordable housing by providing a unit in the downtown area in walking distance to shops, service and employment; granting the waiver fosters the intent, if not the letter of the rules in that the Borough will make up the unit; and the Borough's Fair Share Plan provides a mix of housing options. COAH staff recommends approval of this waiver.

Approved But Not Constructed

Luster/Dodger Blues

Pursuant to N.J.A.C. 5:97-4.3(a)3, Flemington is eligible to receive credit for an affordable unit in a mixed use inclusionary project, known as Luster/Dodger Blues. The development is located at 112-16 Main Street in the Downtown Business District (Block 29, Lot 6) and is .29 acres. The site was granted preliminary site plan approval on August 28, 2007, but is not constructed yet. The development involves improvement of an existing developed lot. The developer is reconfiguring an existing mixed-use building with 1,000 square feet of commercial space and five apartments. Additionally, garages at the rear of the building will be converted to a mixed use building with five apartments on the second floor and garage space on the first floor. The resolution granting preliminary site plan approval requires that one of these apartments will be a two-bedroom, low-income affordable unit. The affordable unit was approved as a result of

the Borough's then adopted growth share ordinance adopted on September 26, 2005, which required an 11.1 percent set-aside.

The site is located in Planning Area 3. However, the site is suitable, has adequate sewer and water capacity available, and is consistent with sound planning principles and the goals, policies and objectives of the SDRP, pursuant to N.J.A.C. 5:97-3.13. In addition, while Flemington's Center designation has expired, the Borough has entered the Plan Endorsement Process.

Flemington has submitted a contract with NORWESCAP, an affirmative marketing plan and an operating manual for the administration of the unit. The affordable unit must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution.

Flemington is requesting one family rental credit and one compliance bonus for the affordable unit. The affordable unit in this development meets the criteria for a compliance bonus credit pursuant to N.J.A.C. 5:97-3.17. [**1 post-1986 rental credit plus 1 compliance bonus**]

Proposed Affordable Housing Mechanisms

The Borough proposes to address the remaining eight-unit obligation through the following mechanism:

Market to Affordable Program

Flemington's Fair Share Plan proposes a seven-unit Market to Affordable Program pursuant to N.J.A.C. 5:97-6.9. The Borough will target existing apartment complexes and homes that are for sale and rent the units to income-eligible households. Flemington has demonstrated that there are sufficient market-rate units within the Borough, as documented by a multiple listing service. The Borough will provide the minimum subsidy of \$25,000 for each moderate-income unit and \$30,000 for each low-income unit. However, the Borough is anticipating a significantly larger subsidy based on recent sales prices. The average sales price for units sold between January 2005 and August 2008 was \$216,000. The Borough has provided a pro-forma

for the program, which details anticipated costs and income from the rental units. Flemington will fund the program with its affordable housing trust fund. The Borough has submitted a spending plan and a resolution of intent to bond in the event of a shortfall in funding that was adopted on December 22, 2008.

Flemington is proposing to provide a two-bedroom, low-income unit through the program to make up for the one-bedroom, moderate-income unit provided in the Flemington Electric site. In addition, the Borough is proposing to deed restrict one of the market to affordable units as a very-low income unit.

Flemington has submitted a contract with NORWESCAP, an affirmative marketing plan and an operating manual for the administration of the program. The units must be certified to be in sound condition as a result of an inspection performed by a licensed building inspector, be affirmatively marketed, and have the proper affordability controls, low/moderate split and rental pricing.

Flemington is requesting seven family rental credits and three rental bonuses for the program. **[7 Unit Market to Affordable Program, plus 3 rental bonuses]**

Proposed Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Market To Affordable Program	Family Rental	7	Rental	3	10
TOTALS		7		3	10

Growth Share Parameters

Flemington Borough has satisfied the applicable Growth Share parameters as follows:

Growth Share Rental Obligation:⁹ 6 Units

Development/Project Name	Type of Affordable Unit	# Units
Herman E. Kapp Apartments	Age-restricted Rental	2
Flemington Electric	Family Rental	1
Luster/Dodger Blues	Family Rental	1
Market to Affordable Program	Family Rental	7
TOTAL		11

Growth Share Family Rental Requirement¹⁰ : 3 Units

Development/Project Name	Type of Affordable Unit	# Units
Flemington Electric	Family Rental	1
Luster/Dodger Blues	Family Rental	1
Market to Affordable Program	Family Rental	7
TOTAL		9

⁹ Projected Growth Share Rental Obligation: $.25(\text{Projected Growth Share})$ or $.25(21) = 5.25$ or 6 units - N.J.A.C. 5:97-3.10(b)3

¹⁰ Projected Growth Share Family Rental Requirement: $.5(\text{Projected Growth Share Rental Requirement})$ or $.5(6) = 3$ units N.J.A.C. 5:97-3.4(b)

Growth Share Minimum Family Requirement¹¹ : 8 Units

Development/Project Name	Type of Affordable Unit	# Units
Martin Village	Family For-Sale	1
Flemington Electric	Family Rental	1
Luster/Dodger Blues	Family Rental	1
Market to Affordable Program	Family Rental	7
TOTAL		10

Very Low Income Minimum Requirement¹² : 2 Units

Development/Project Name	Type of Affordable Unit	# Units
Anderson House	Supportive/Special Needs Housing	6
Market to Affordable Program	Family Rental	1
TOTAL		7

Age-Restricted Maximum¹³ : 5 Units

Development/Project Name	Type of Affordable Unit	# Units
Herman E. Kapp Apartments	Age-restricted Rental	2
TOTAL		2

¹¹ Projected Growth Share Family Requirement: .5 (Units Addressing the Growth Share Obligation) or .5(16)= 8 units N.J.A.C. 5:97-3.9

¹² Growth Share Very Low Income Requirement: .13(Units Addressing the Growth Share Obligation) or .13(16)= 2.08 or 2 units N.J.S.A. 52:27D-329.1

¹³ Projected Growth Share Age Restricted Maximum: .25(Projected Growth Share) or .25(21)= 5.25 or 5 units N.J.A.C. 5:97-3.10(c)2

Bonus Maximum¹⁴: 5 Bonuses

Development/Project Name	Type of Bonus	# Bonuses
Flemington Electric	Compliance	1
Luster/Dodger Blues	Compliance	1
Market to Affordable Program	Rental	3
TOTAL		5

Actual Growth Share Obligation

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, Flemington has issued certificates of occupancy for 22 housing units and also for the nonresidential square footage equivalent of 46 jobs, yielding an actual growth share obligation through September 30, 2008, of seven affordable units.¹⁵

¹⁴ Projected Bonus Maximum: $.25(\text{Projected Growth Share})$ or $.25(21) = 5.25$ or 5 units
N.J.A.C. 5:97-3.20

¹⁵ The number of residential COs (22) is divided by 5 to yield 4.4 units and the number of jobs (46) is divided by 16 to yield 2.9 units. Flemington's total estimated actual growth share is therefore 7 units ($4.4 + 2.9$). **Note:** this estimate does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

D. Summary of Plan to Address Fair Share Obligation

REHABILITATION SHARE SUMMARY

Rehabilitation Share: 17 Units

Program Name	# Units
Rehabilitation Program	17
TOTAL	17

PRIOR ROUND SUMMARY

Prior Round RDP: 4 Units

	Name of Mechanism	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Prior Cycle Credits	N/A				-
Post-1986 Credits	Martin Village inclusionary development	3	-	-	3
	Herman E. Kapp Apartments	1	-	-	1
Subtotal		4		-	4
Proposed Mechanisms	N/A	-	-	-	0
Subtotal		-	-	-	0
TOTAL					4

GROWTH SHARE SUMMARY

Projected Growth Share Obligation: 21 Units

	Name of Mechanism	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Prior Cycle Credits	N/A	-		-	-
Post-1986 Credits	Martin Village inclusionary development	1	-	-	1
	Herman E. Kapp Apartments	2	-	-	2
	Anderson House	6	-	-	6
	Flemington Electric	1	Compliance	1	2
	Luster/Dodger Blues	1	Compliance	1	2
Subtotal		11		2	13
Proposed Mechanisms	Market To Affordable Program	7	Rental	3	10
Subtotal		7		3	10
TOTAL					23
Surplus					+2

III. FAIR SHARE DOCUMENT REVIEW

A. Development Fee Ordinance

Flemington's certified plan included a development fee ordinance that was approved by COAH on December 20, 2001, and adopted by the Borough on February 11, 2002. COAH granted Flemington approval of an amendment to its development fee ordinance on June 5, 2008,

which was adopted by the Borough on July 28, 2008. COAH granted the Borough approval of an amendment to its development fee ordinance on February 25, 2009.

B. Third Round Spending Plan

Flemington's prior round spending plan was approved by COAH on July 31, 2003. A revised third round spending plan was submitted by Flemington with the Borough's third round petition for COAH's review and approval. The spending plan will be reviewed by COAH in a separate report.

C. Affordable Housing Ordinance/Affordable Housing Administration

Flemington Borough has an adopted affordable housing ordinance for its prior round obligation. Flemington has submitted a revised draft affordable housing ordinance that comports with the requirements of the UHAC, which was amended on December 20, 2004. The draft proposed ordinance has also been amended to include compliance with barrier free sub-code of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

An ordinance establishing the position of a municipal housing liaison and a resolution appointing a municipal housing liaison were adopted by the Borough on August 14, 2006.

Flemington is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within the Borough and must identify an experienced administrative entity for that purpose by the contract, agreement or letter. Flemington has submitted a contract with NORWESCAP as its administrative entity for all affordable units, except for the Anderson House. Pursuant to N.J.A.C. 5:80-26.14(b), Flemington has submitted a written operating manual for administering affordable units within the Borough.

D. Affirmative Marketing Plan

Flemington has submitted an affirmative marketing plan that comports with the requirements of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. and ensures the units in the Borough's 1987-2018 Fair Share Plan and all future affordable housing

units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by the Borough within 45 days of COAH's grant of substantive certification and submitted to COAH.

IV. MONITORING

Flemington must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the Borough's actual growth pursuant to N.J.A.C. 5:97-2.5. Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of Flemington's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in Flemington and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Borough is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97- 3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct Flemington Borough to amend its plan to address the shortfall.

V. RECOMMENDATION

COAH staff recommends that Flemington Borough be granted conditional third round substantive certification with the following conditions to be met within 60 days, or no later than June 7, 2009:

1. The Borough shall designate an experienced administrative entity for its rehabilitation program in accordance with N.J.A.C. 5:96-18; and
2. The Borough shall submit an operating manual for its rehabilitation program.

Once these items are submitted to COAH, the Borough will be granted final third round substantive certification. COAH staff also recommends approval of the waiver from N.J.A.C. 5:80-26.3(a) and (b) for the affordable unit in the Flemington Electric development. Flemington must adopt all necessary implementing ordinances within 45 days of the grant of final substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption.